Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1154

STEFFRON, INC., *Petitioner*

vs.

ELMER A. LUSKEY, JR. and
ROSE MARIE LUSKEY, his wife,
and W. ANTHONY DUNN,
Respondents

Brief of Respondent, W. Anthony Dunn, in Opposition to Petition of Steffron, Inc. for a Writ of Certiorari to the Supreme Court of Pennsylvania

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent, W. Anthony Dunn, respectfully prays that the Petition of Steffron, Inc. be denied.

JURISDICTION

Petitioner invokes jurisdiction of the Supreme Court of the United States under 28 U.S.C. §1257(c). This citation is incorrect. The correct citation is 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

Respondent objects to the first question presented by Petitioner.[1] The proper and only question presented is:

> Where the name and address of owners of vacant real estate are known or easily ascertainable and where the owners of said real estate reside in a county other than a county in which said real estate is located, does due process of law require that after the issuance of a writ of execution notice other than by publication or posting be given to the judgment debtor prior to the sheriff's sale of said vacant real estate?

Respondent also objects to the second question presented by Petitioner.[2] The Supreme Court of the United States does not have jurisdiction to consider the second question presented by Petitioner as it does not draw in question the validity of a state statute on the ground of its being repugnant to the Constitution of the United States as required by 28 U.S.C. §1257(3). *Stadelman v. Miner*, 246 U.S. 544 (1918).

STATEMENT OF THE CASE

Petitioner's Statement of the Case is substantially correct. However, Respondent submits the following additional facts which Petitioner's Statement of the Case did not include.

1. After Respondents Luskey reacquired the property in question by the sheriff's deed issued to them by the Sheriff of Allegheny County on April 6, 1970, a deficiency judgment proceeding ensued wherein the fair market value of the property, which had been designated as Block 26-R, Lot Nos. 80 and 114, by the Deed Registry of Allegheny County, was determined to be $52,000.00 as of April 6, 1970.

[1]Petition, page 2

[2]Petition, page 2

2. Respondent, W. Anthony Dunn, entered into an agreement with Respondents Luskey on November 13, 1973, to purchase one of the parcels of property, namely, that designated as Block 26-R, Lot No. 114 for the sum of $16,500.00

3. Respondents Luskey had no actual notice of the impending sherriff's sale of their property.

4. Petitioner's statement that the Court of Common Pleas of Allegheny County decided all state law issues against Plaintiff (Respondents) is not accurate.[3] The Court of Common Pleas of Allegheny County also held that Respondents were denied due process of law in violation of Article 1, Section 1 of the Constitution of Pennsylvania.[4]

REASONS FOR DISALLOWANCE OF THE WRIT

I. A. Endicott-Johnson Corporation v. Encyclopedia Press, Inc., is not controlling in the present case.

The only issue before this Court in *Endicott-Johnson Corporation v. Encyclopedia Press, Inc.*, 266 U.S. 285 (1924) was whether due process of law required that a judgment debtor receive notice before the issuance of a garnishment execution. Respondents have never argued that they were entitled to notice prior to the issuance of the writ of execution. The only issue in the present case is whether, after the issuance of the writ of execution, notice other than by publication and posting of the property be given to the judgment debtor of the impending sheriff's sale.

Furthermore, the rationale of *Endicott-Johnson* has never been reaffirmed by this Court. In fact, said rationale was rejected in *Griffin v. Griffin*, 327 U.S. 220 (1946).[5]

[3]Petition, page 5

[4]Petition, Appendix 28a

[5]See discussion of *Griffin* in Section II, *infra*.

B. The decision of the Supreme Court of Pennsylvania does not go beyond this Court's decision in Mullane v. Central Hanover Bank & Trust Co.

The "caretaker" theory dictum of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)[6] has no applicability to the present case since the address of the Respondents Luskey was known or easily ascertainable.

Mullane specifically held that notice by publication is not sufficient with respect to an individual whose name and address are known or easily ascertainable. This holding has been reaffirmed in *Robinson v. Hanrahan*, 409 U.S. 38 (1972); *Schroeder v. City of New York*, 371 U.S. 208 (1962); *Walker v. City of Hutchinson*, 352 U.S. 112 (1956) and *New York v. New York N.H. & H.R. Co.*, 344 U.S. 293 (1953).

Since Respondents were given no notice of the impending sheriff's sale other than by publication or posting, although their address was available from the tax records of Allegheny County,[7] the Pennsylvania Supreme Court correctly decided this case in accordance with *Mullane* and its progeny.

II. The question presented in this case was answered by this Court in Griffin v. Griffin.

In *Griffin*, supra, the husband and wife were divorced in New York in 1924. On June 24, 1924, the Supreme Court of the State of New York entered its interlocutory judgment divorcing wife from husband, which judgment was in 1926, modified to provide that husband shall pay to wife alimony in the sum of $3,000.00 annually in equal monthly installments. In 1935, the wife reduced the support arrearages to judgment. In 1938, the wife obtained an order from the

[6]Petition, page 8

[7]Petition, page 4

trial judge requiring the court clerk to docket the arrearages as of 1938. By docketing the arrearages, a judgment was created in favor of the wife from which an execution could issue. No notice of the 1938 order or the docketing of the arrearages was given to the husband. The wife sought to enforce the 1938 judgment in the District of Columbia and the husband objected. This Court held that the husband would be deprived of due process if the 1938 judgment was enforced because he had not been given notice before the order was issued or before the arrearages were docketed.

Despite Justice Rutledge's dissenting opinion, which cited *Endicott-Johnson* for the proposition that due process only requires that notice of suit be given once, and when this has been done and a valid judgment entered, no additional notice must be given before execution,[8] in an opinion delivered by Chief Justice Stone, this Court stated:

> "While it is undoubtedly true that the 1926 decree, taken with the New York practice on the subject, gave petitioner notice at the time of its entry that further proceedings might be taken to docket in judgment form the obligation to pay installments accruing under the decree, we find in this no ground for saying that due process does not require further notice of the time and place of such further proceedings, inasmuch as they undertook substantially to affect his rights in ways in which the 1926 decree did not."[9]

III. Real estate tax sales and divestiture of lien procedures by judicial sales are not before this Court.

Petitioner argues, in Sections III and V of its Petition[10] that the decision of the Pennsylvania Supreme Court: (a)

[8]327 U.S. at 240

[9]327 U.S. at 229

[10]Petition, pages 10-11, 13-14

rejects the reasoning of a number of real estate tax sales cases in a number of states, and (b) raises serious doubts as to whether liens have been or will be constitutionally divested by judicial sales held under existing procedures.

These arguments involve issues that are not germane or relevant to the specific constitutional question involved in this case and should not be considered by this Court.

IV. The validity of execution procedures upon real estate in the other states of the United States is not before this Court.

In Section IV of the Petition,[11] Petitioner argues that the decision of the Pennsylvania Supreme Court in the instant case calls into question the constitutionality of executions on real estate in some of the other states of the United States.

As Petitioner has pointed out, an examination of the execution statutes of the various states reveals myriad and multi-faceted procedures which each state has historically developed. Each statutory procedure is unique; and any challenge to the constitutionality of any one statutory procedure on due process grounds must be examined in relation to a particular factual situation.

Any such challenge must first be brought in a state court. In the event a state court decides that its particular statutory procedure is unconstitutional, it would be said state court's sole decision whether to apply its decision retroactively or prospectively, as the Pennsylvania Supreme Court did in the instant case.[12]

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[11]Petition, page 11

[12]See Section V, *infra*

V. The prospective application of the decision of the Supreme Court of Pennsylvania does not deny any rights protected by the Federal Constitution.

The argument set forth in Section VI of the Petition[13] does not present any constitutional question and should not be considered by this Court.

In *Great Northern Railway Company v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932), in an opinion delivered by Justice Cardozo, this Court stated:

> "We think the Federal Constitution has no voice upon the subject. A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relief backward."[14]

CONCLUSION

It is respectfully submitted that the foregoing considerations exclude the instant case from the contemplation of Rule 19.1.a of the Rules of the Supreme Court of the United States, and, therefore, from the proper scope of this Honorable Court's discretionary power of review. Respectfully, Respondent W. ANTHONY DUNN prays that the Petition of Steffron, Inc. be denied.

Respectfully submitted,

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[13]Petition, pages 14-16

[14]287 U.S. at 364